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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,797	11/26/2003	Javier Alarcon	P-6013	4139
46851	7590	03/02/2007		
DAVID W. HIGHET BECTON, DICKINSON AND COMPANY 1 BECTON DRIVE, MC110 FRANKLIN LAKES, NJ 07417			EXAMINER BERHANU, ETSUB D	
			ART UNIT	PAPER NUMBER
			3768	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/02/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/721,797	ALARCON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Etsub D. Berhanu	3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 February 2007 has been entered.

***Claim Rejections - 35 USC § 103***

3. Claims 1-7, 9-35, 37, 38 and 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alcala et al.'405 (previously cited) further in view of Lakowicz et al.'534 (previously cited).

See rejection set forth in paragraph 2 of Office Action mailed out 20 October 2006.

4. Claims 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alcala et al.'405, further in view of Lakowicz et al.'534, as applied to claim 1, and further in view of Darrow et al.'651 (previously cited).

See rejection set forth in paragraph 3 of Office Action mailed out 20 October 2006.

***Response to Arguments***

5. Applicant's arguments filed 20 February 2007 have been fully considered but they are not persuasive. Applicant argues on page 10 of the Remarks that neither Alcala et al.'405 nor Lakowicz et al.'534 teach or suggest "a matrix adapted to transduce a luminescence change upon specific binding of the periplasmic binding protein to the target analyte." Examiner draws the Applicant's attention to Alcala et al.'405 at col. 6, lines 41-49 that teaches a polymer matrix adapted to transduce a luminescence change upon specific binding of a periplasmic binding protein. In particular, col. 6, lines 41-49 of Alcala et

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al.'405 discloses that light emitted by the phosphorescence of material 49 is transmitted into an optical conduit, therefore the luminescence change resulting from the binding of the periplasmic protein is transduced through the matrix and into the optical conduit. It is noted that Applicant presents no additional arguments against any of the prior art combinations. Thus, contrary to Applicant's arguments, the prior art teaches all of the features of the claimed invention and the rejections are hereby maintained.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etsub D. Berhanu whose telephone number is 571.272.6563. The examiner can normally be reached on Monday - Friday (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on (571)272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EDB

ERIC F. WINAKUR  
PRIMARY EXAMINER